UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

LORI ZARLENGABLAQUIERE
Plaintiff

C.A. No. 06-534 ML

V.

EDWARD A. CHARBONEA, individually
and in his capacity as Chief of Police
of the North Kingstown Police Department,
ROBERT D. DESJARLAIS, individually
and in his capacity as Detective Lieutenant
of the North KingstownPolice Department,et al.,
Defendants

PLAINTIFF'S OBJECTION TO DEFENDANTS, CHARBONEA AND DESJARLAIS'S MOTION TO DISMISS IN LIEU OF ANSWER

COMES NOW , Lori Zarlenga Blaquiere (Plaintiff) and hereby object to the defendants, Charbonea and Desjarlais's Motion to Dismiss in Lieu of Answer.

Plaintiff requests that this Court deny defendants Motion to Dismiss in Lieu of Answer or in the alternative Plaintiff requests that if this Court finds any technical shortcomings in Plaintiff's complaint that this court will allow Plaintiff 30 days to correct and amend Plaintiff's complaint with some guidelines on how to do this without compromising the details of the case.

Plaintiff requests that this Court consider materials outside of Plaintiff's complaint. Plaintiff requests that this court examine any and all of Plaintiff's exhibits attached to Plaintiff's complaint and consider all materials and evidence Plaintiff has attached to Plaintiff's complaint and filed in this Court.

As the basis for Plaintiff's objection, the Plaintiff submits herewith Plaintiff's Memorandum of Law in Support of Plaintiff's Objection to the defendants, Charbonea and Desjarlais's Motion to Dismiss in Lieu of Answer.

Respectfully submitted on this 7th day of April 2007.

Lori Zarlenga Blaquiere
Pro Se
101 Border Street
West Warwick, R.I.02893
Phone: (401) 821-3960

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day April 2007, I served a copy of the within Plaintiff's Objection to defendants Charbonea and Desjarlais Motion to Dismiss in Lieu of Answer to, Marc DeSisto, Desisto Law , 211 Angell St. P.O. Box 2563, Providence, R.I. 02906-2563, Rebecca Tedford Partington, Attorney General's Office, 150 South Main Street, Providence, R.I. 02903 by overnight Express mail, postage prepaid.

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PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OBJECTION AND OPPOSITION TO DEFENDANTS, CHARBONEA AND DESJARLAIS'S MOTION TO DISMISS IN LIEU OF ANSWER

Plaintiff objects and opposes the defendants, Charbonea and Desjarlais's Motion to Dismiss Plaintiff's complaint in Lieu of Answer filed by defense counsel for the defendants for the following reasons:

1. Plaintiff states that Plaintiff's complaint is not frivolous and is not being presented for any improper purpose and should not be dismissed on a technicality that could be remedied at the request of this court with some guidelines on how to do this without compromising the details of the case.

2.Plaintiff states that the defendants are familiar with the facts underlying the claim and that the defendants are just causing delay and trying to avoid incriminating themselves by avoiding to answer Plaintiff's complaint, Fed. R. Civ. P, Rule 1 to "secure a just, speedy, and inexpensive determination of every action,".

3.Plaintiff states that the defendants should file an affidavit establishing inability to form a response to Plaintiff's complaint.

4.Plaintiff states that to reduce Plaintiff's 78 page complaint would compromise the integrity of the case. Therefore, a short and concise statement would not comply with Fed. Rule of Civ. P, Rule 8 (f) " All pleadings shall be so construed as to do substantial justice."

5.Plaintiff stands by all accusations in this case . Because of the complexity of this case, the multiple defendants, multiple causes of action, and the serious nature of the allegations involved, and inorder to avoid a conflict with Fed. Rule of Civ. P, Rule 12 (e) " motion for a more definite statement", plaintiff chose to plead her case with particularity.

6.Plaintiff has given the defendants information and notice of evidence to provide meaningful responses, instead of unsubstantiated accusations as contained in many "concise" lawsuits.

7.Plaintiff requests that this Court consider materials outside of the Plaintiff's complaint.

8. Plaintiff requests that this court examine any and all of Plaintiff's exhibits attached to Plaintiff's complaint and consider all materials and evidence Plaintiff has attached to Plaintiff's complaint and filed in this Court, See 5C Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 3d 1366, at 184-186 (2004) (providing that a court may consider "exhibits that are attached to the pleading, matters of which the district court can take judicial notice, and items of unquestioned authenticity that are referred to in the challenged pleading and are 'central' or 'integral' to the pleader's claim for relief").

Furthermore, a dismissal under failure to state a claim upon which relief can be granted would have to be "treated as one for summary judgment", and " all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56" as stipulated in Fed. Rule Civ. P, Rule 12 (b).

9.Plaintiff states that Motions to dismiss under Rule 12 (b)(6) motions start from the premise that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." Roma Constr. Co. v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996); accord Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102 (1957) .

10. In ruling upon a motion to dismiss, a trial court thus is required to " construe the complaint broadly, accepting all facts pleaded therein as true and viewing all inferences in a light most favorable to the plaintiff," Figueroa v. Rivera, 147 F. 3d 77, 80 (1st Cir. 1998);Public Citizen, Inc. v. Miller, 992 F.2d 1548 (11th Cir. 1993), citing Cooper v. Pate, 378 U.S. 546, 84 S. Ct. 1733 (1964); Oladeinde v. City of Birmingham, 963 F.2d 1481, 1486 (11th Cir.1992), cert. denied, 507 U.S. 987, 113 S. Ct. 1586 (1993).

11.In their motions, the defendants seek dismissal of plaintiff's complaint not on the basis of a favorable reading of what is actually plead but on technicalities and a misreading of plaintiff's complaint.

EVEN IF THE COMPLAINT COULD BE IMPROVED
DIMISSAL IS NOT THE APPROPRIATE REMEDY

12. Even if the Court determines that improvements should be made to the complaint before defendants are required to answer, dismissal is not appropriate " unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief, " Conley, 355 U.S. at 45-46 78 S.Ct. at 101-102.

13. A district court should give a plaintiff an opportunity to amend his complaint rather than dismiss it when it appears that a more carefully drafted complaint might state a claim upon which relief could be granted, " Friedlander, 755 F.2d at 813; Dussouy v. Gulf Coast Investment Corp., 660 F.2d 594, 597-99 (5th Cir. 1981).

14.Where a complaint properly states some claims for relief but includes other allegations that do not satisfy Rule 9 (b), dismissal of the entire pleading is clearly unwarranted. A more appropriate remedy in such circumstances is a Rule 12 (e) request for a more definite statement with respect to the allegations, See Guam Investment Company v. Central Building, Inc., 288 F. 2d 19, 24 (9th Cir.1961).

15. Even Rule 12 (e) should only be used only where the specific allegations fail to provide a defendant sufficient basis to plead in response, Sisk v. Texas Parks and Wildlife Dept., 644 F.2d 1056, 1059 (5th Cir. 1981).

16.The need for discovery before testing a complaint for factual sufficiency is particularly acute for civil rights Plaintiff's, who often face informational disadvantages.

17.Plaintiff states that it would be premature to dismiss Plaintiff's case before an opportunity for discovery. It is the first principle of federal civil procedure that litigants "are entitled to discovery before being put to their proof." Bennett v. Schmidt, 153 F.3d 516,519 (7th Cir.1998).

18.Plaintiff states that it would not be in the interest of justice for this court to not afford Plaintiff the opportunity to correct any technical shortcomings that this court may find in Plaintiff's complaint . Rule 15 (a) provides that leave to amend " shall be freely given when justice so requires."

19.Plaintiff seeks leniency from this court. Plaintiff is at a disadvantage, since Plaintiff is not an attorneys and for reasons mentioned herein.

20. Plaintiff request from this court leniency based on Plaintiff's Pro Se status and to ensure a miscarriage of justice does not continue to occur in Plaintiff's case . Pro Se litigants must be ensured meaningful access to the courts, Bounds v. Smith 430 U.S. 817, 823, (1977).Pro Se pleadings are held to less stringent standards than those prepared by attorney, Haines v. Kerner 404 U.S. 519, 520-521 (1972). In Walter Process Equipment v. Food Machinery , 382 U.S. 172 (1965) it was held in a " motion to dismiss, the material allegations of the complaint are taken as admitted and true.

21.Where a Plaintiff pleads Pro Se in a suit for protection of civil rights, the court should endeavor to construe Plaintiffs pleading without regard to technicalities, Picking v. Pennsylvania Railway (151 F2d. 240) Third Cir. Court of Appeals.

22.In Puckett v. Cox, it was held that Pro Se complaint requires a less stringent reading than one drafted by a lawyer, (456 F2d 233 (1972 Sixth Circuit USCA) said Justice Black in Conley v. Gibson, 355 U.S. 41 AT 48 (1957) "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8 (f) FRCP all pleadings shall be construed to do substantial justice".

23.Plaintiff states that if this court grants defendants motion to dismiss in lieu of answer, then this court allows to stand violations of the First, Fifth, Ninth, including but not limited to the Fourteenth amendments of the U.S. Constitution which would certainly not be in the general interest or good.

First Amendment in pertinent part provides:

> The First Amendment guarantees the freedom of worship, of speech, of the press, of assembly, and of petition to the government for redress of grievances.

Fifth Amendment in pertinent part provides:

> " No person shall ... ; ... ; ... , nor be deprived of life, liberty, or property, without due process of law; ...."

Ninth Amendment in pertinent part provides:

> " The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment in pertinent part provides:

> no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, with out due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

For all of the foregoing reasons, Plaintiff requests that this Court deny defendants Motion to Dismiss in Lieu of Answer or in the alternative Plaintiff requests that if this Court finds any technical shortcomings in Plaintiff's complaint that this court will allow Plaintiff 30 days to correct and amend Plaintiff's complaint.

Respectfully submitted on this 7th day of April 2007.

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